



REMARKS

Claims 1-13 are pending in this application. By this Amendment, claim 1 is amended. No new matter is added. Favorable reconsideration and allowance of this application are respectfully requested.

ELECTION/RESTRICTION REQUIREMENT

Applicant acknowledges the withdrawal of claims 8-13 as being directed to a non-directed invention. Applicant specifically reserves the right to file a divisional application directed to claims 8-13 at a later time.

CLAIM REJECTIONS - 35 U.S.C. § 103

Claims 1-7 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Birk, SE 2000-00179 A, in view of Mangan, USP 6,031,367. This rejection is respectfully traversed.

Applicant submits that Birk and Mangan, individually or in combination, fail to disclose or suggest a method for separating a first quantity of milk drawn from a milking animal in an automatic milking machine and a second quantity of milk drawn from the milking animal and said milking machine, comprising, *inter alia*, "measuring a first indicator of mastitis during said milking, and in response to said first indicator of mastitis, a second indicator of mastitis is performed", as recited in claim 1.

By contrast, Birk merely discloses a flow meter for measuring quantity and quality of the milk. That is, Birk fails to disclose or suggest performing a "second indicator of mastitis" whereby the measurement of the first mastitis test will indicate for such a second test.

Further, Birk appears to teach that the quality of milk is always measured by a single test, and not by a two-step analysis test. In other words, Birk discloses a milking machine where the milk from each teat of a cow is lead to different receivers, and that each milk conduit from the different teats may include a flow meter for measuring the quantity and/or quality.¹

¹ See Birk, page 4, first paragraph.

Moreover, in an alternative embodiment, Birk discloses receivers having measuring elements, e.g., flow sensors 45-48, to measure the quantity and quality of the milk. However, it is submitted that the measuring elements are not used simultaneously. Therefore, the milking machine disclosed in Birk provides only one measuring step. Further, Birk discloses only one of the quality measuring device is utilized, namely the flow sensor or the measuring element of the receivers (e.g., in a first embodiment, a flow sensor is used, and in the second embodiment, measuring elements in the receivers are used). Thus, Birk is silent about using two different measurements, and is therefore also silent about any cooperation between the measuring devices 25 and the flow sensors 45-48.

With regard to Mangan, Applicant submits that Mangan is also completely silent with regard to “a first indicator of mastitis” and “a second indicator of mastitis”. Mangan merely discloses a probe with two electrodes positioned in a zone of optimum sensing inside the flow chamber and provides a modulated signal according to the number of sodium ions present in the sample.² Thus, Mangan fails to disclose a “two-step” test of mastitis.

Further, the Examiner is using *impermissible hindsight* reconstruction to reject the features recited in claim 1. For example, the Examiner’s assertion that “it would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the step of using an on-line cell counter as taught by Mangan and the method of Birk in order to get a more accurate analysis of mastitis in the milk” is not evidence for obviousness. Applicant disagrees with the Examiner’s reasoning, and submits that the mere possibility that one element and one reference could be used in another is not sufficient evidence of a suggestion or motivation to combine the two references. Applicant submits that the Examiner has used the present application as a blueprint, selected a milking apparatus of Birk, and then search other prior art for the missing features” (e.g., on-line cell counter), without identifying or discussing and specific evidence or motivation to combine, other than providing conclusory statements regarding the knowledge in the art, motivation and obviousness. Thus, Applicant

² See Mangan, column 6, lines 42-61.

Applicant submits that the Examiner has failed to provide proper evidence of motivation for combining the teachings of Birk and Mangan.

For at least these reasons, claim 1 is allowable. Claims 2-7 which is dependent thereon are also allowable over the prior art. Withdrawal of this rejection is respectfully requested.

CONCLUSION

In view of the above, Applicant earnestly solicits reconsideration and allowance of all of the pending claims.

Should there be any matters that need to be resolved in the present application, the Examiner is respectfully requested to contact the telephone number of the undersigned below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,
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